IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 23166 of 2004

Between:

1. Dr. M.V. Sudhakar, S/o. Sri M. Venkatappa,
R/o. Visakahapatnam.
2. Dr. K. Anand Babu, W/o. Sri J. Kancharla,
R/o. Hyderabad.
3. Dr. Ch. Jacob, S/o. Sri Premanandam,
R/o. Visakahapatnam.

..... PETITIONERS

AND

1. Government of Andhra Pradesh, Rep. by its Principal Secretary,
Health, Medical and Family Welfare Department, Secretariat, Hyderabad.
2. NTR University of Health Sciences, Vijayawada, Rep. by its Registrar.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction, more particularly one in the nature of Writ of Mandamus: (a) Declare the action of the respondents in not reviewing and re-allotting the admissions of Scheduled Caste Category candidates in terms of the Hon'ble Supreme Court Judgment reported in 2004(1) Decisions Today, SC 1028 as arbitrary, illegal and violative of Article 14 of our Constitution; (b) Direct the respondents to review and re-allot the candidates in terms of Hon'ble Supreme Court Judgment reported in 2004(1) Decisions Today, SC 1028 in the category of Scheduled Caste purely on merits, but not based upon categorization as SC-A, B, C and D, (c) or Alternatively upgrade the petitioners Diploma Courses into Master Degree Course in which they are pursuing, and pass such other or further orders

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for the Respondent No.1: GP FOR MEDICAL HEALTH & FAMI.WELFARE

Counsel for the Respondent No.2: Smt. Y. Padmavathi

The Court made the following:

ORDER:

Petitioners, who belong to Scheduled Caste communities had after obtaining their MBBS Degrees, sought admission into

Post-graduate Medical Courses for the academic year 2003-04 and appeared for the entrance examination held on 31-12-2003. As per the results published, petitioners secured 761, 537 and 287 ranks respectively. But during counselling, in view of the categorization of the Scheduled Caste into A, B, C and D groups vide G.O.No.47 dated 31.05.2004 issued in pursuance of

A.P. Scheduled Castes (Rationalization of Reservations) Act, 2000 (the Act), and the Rules made thereunder (the Rules), petitioners who were placed in SC-C category, were given admission into Diploma in Anaesthesia in Andhra Medical College, Visakhapatnam (for 1st petitioner), Diploma in Anesthesia at Guntur Medical College (to the 2nd petitioner) in the first counselling, and as there was a vacancy in Diploma in Anesthesia course at Osmania Medical College, Diploma in Anaesthesia at Osmania Medical College (to the 2nd petitioner) and in Diploma in Child Health in Andhra Medical College, Visakhapatnam (to the 3rd petitioner). Provisional selection intimation sent to all the selected candidates contained a note that the selections and admissions in respect of the Scheduled Caste category candidates would be subject to the result of Civil Appeals pending in the Supreme Court. (The said Civil Appeals were filed questioning the judgment of a larger Bench of this Court upholding the validity of the Act) Subsequent to the Supreme Court allowing those appeals and striking down the Act as violative of Art.14 of the Constitution in **E.V.CHINNAIAH v. STATE OF ANDHRA PRADESH** petitioners filed this petition alleging that in spite of their securing decent ranks and marks they were given admission in Diploma Courses only, and since persons who secured lesser mark than them and who are ranked below them were given admission into M.S. and other courses, because of the reservation as per the division among Scheduled Caste as A, B, C and D, respondents who are duty bound to make a review of the admissions are not undertaking such review in spite of their request.

2. On behalf of the respondents, Registrar of the second respondent University filed his counter affidavit inter alia contending that in view of the ratio in **MEDICAL COUNCIL OF INDIA v. MADHU SINGH** the petition is liable to be dismissed more so because the decision of the Supreme Court in **E.V.CHINNAIAH** case (1 supra) will only have prospective effect but not retrospective effect. It is also alleged that the note made in the provisional selection intimations sent to the candidates (students) that admissions would be subject to the result of the appeals before the Supreme Court, was made only as per the directions of the Government of Andhra Pradesh.

3. The contention of the learned counsel for the petitioners is that since the Apex Court struck down the Act, categorization of the Scheduled Caste into four groups as SC-A, SC-B, SC-C and SC-D is a nullity, and since the Supreme Court while admitting the appeals, had on 25/01/2001 ordered that the admissions to be made in any of the professional courses, or any appointment that may be made pursuant to the Act would be subject to the result of the appeals, and since second respondent while sending the provisional selection intimation to the petitioners and other students clearly stated therein that selections and admissions in respect of the Scheduled Caste category candidates shall be subject to the result of Civil Appeals pending before the Supreme Court, second respondent though bound to review the admissions of Scheduled Caste candidates did not take up the review of admission in spite of reminders. It is his contention that a reading of the counter affidavit filed on behalf of second respondent, would reveal the casual and callous manner in which the University is looking at the review of admissions, in spite of the directions of the apex Court that the admission would be subject to the result of the appeal, and even after the appeal was allowed. It is his contention that the ratio in **MADHU SINGH** case (2 supra), under which respondents are trying to take shelter, has no application to the facts of this case and since the apex Court did not apply the doctrine of prospective overruling, while striking down the Act, respondents who are bound to undertake the review of admissions of Scheduled Caste students, cannot, by reading something which is absent in the judgment of the apex Court in **E.V.CHINNAIAH** case (1 supra), contend that the judgment of apex Court has only a prospective operation.

4. The contention of the learned counsel for second respondent is that since the

Apex Court in several decisions held that there cannot be midstream admissions, and since taking up of review of admissions of the petitioners would amount to making admissions in the midstream, second respondent having been confronted with a legal problem, is not able to undertake the exercise of review of the admissions already made, because it, according to her, would be violating the spirit and ratio in the judgments of the apex Court in **MADHU SINGH** case (1 supra), **SHAFALI NANDWANI v. STATE OF HARYANA**, **NEELU ARORA v. UNION OF INDIA**, **SUPREET BATRA v. UNION OF INDIA** and **MRIDUL DHAR v. UNION OF INDIA** cases. She contended that in similar circumstances since a learned single Judge of this Court in **Dr.S.Sushma Kumari v. State of A.P. (W.P.No.20769 of 2003 and 8733 of 2004)** while observing-

> "The university no doubt notified the counseling on 20.08.2003 beyond the last date prescribed by the Government of India/MCI in their policy guidelines. That was not due o the fault on the part of the university. Various reasons like Court orders, Government Orders, etc., curtailed the liberty of the university and in spite of the same, the university completed admissions for 2003-2004. Merely because this situation has arisen for no fault of the university, a student cannot seek a Mandamus before this Court which would be contrary to the regulations and policy guidelines issued by MCI under Section 33 of the MCI Act and binding precedents of the Hon'ble Supreme Court. As rightly and fairly contended by the learned Standing Counsel for the university with regard to filling up the seats reserved for different classes or with reference to sliding rule the decision of this Court would have to be prospective and does not in any manner nullifies the selections and directions already made. Though this Court dismissed the W.P.M.Ps. filed by second petitioner in the earlier Writ Petition on 10.2.2004 and admissions were completed in April, 2004, the petitioners have not chosen to implead all the candidates got admitted to various specialities in MDS. In the absence of these proper and necessary parties, no Mandamus can be issued as prayed for. This also yet another reason for denying relief to petitioners."

dismissed writ petitions for similar relief, petitioners are also not entitled to any relief. It is also her contention that since petitioners did not make the Medical Council of India and all the Scheduled Caste candidates who were given admission in the Post-graduate Courses parties to this petition, the same is bad for non-joinder of necessary parties and for that reason also it is liable to be dismissed.

5. That the intimation sent to all the Scheduled Caste students, who were provisionally selected, contained a note that their admissions are subject to the

result of the appeal in the Supreme Court, is an admitted fact. If I may say so the averments towards the end of para-16 of the counter affidavit filed on behalf of 2nd respondent reading-

> "As per the order of the Government of A.P., the University has incorporated the above provision in all admission regulations and admission orders."

if taken literally, would mean that though it had no intention to abide by the order of the Supreme Court, only because it was compelled by the Government to incorporate such a note in the intimations, did it make such a note in the intimations sent to the selected Scheduled Caste candidates, probably, oblivious of the fact that even without such a note, it would be bound by the order of the apex Court, and any violation thereof can be only at the pain of facing contempt proceedings. In the above circumstances, I find force in the contention of the learned counsel for petitioner that 2nd respondent has taken things casually, and did not either realize the effect of its not following the order of the apex Court, or had deliberately and wilfully avoided taking up of the exercise, which it is bound and ought to have taken up.

6. From a reading of the judgment of the Apex Court in **E.V.Chinnaiah** case (1 supra), it is clear that the Act was struck down on the ground that it is beyond the competence of the State Legislature and as it is also violative of Art.14 of the Constitution of India. When once the Apex Court holds an enactment to be beyond the competence of State Legislature, and is violative of Art.14 of the Constitution, it means that the said enactment is void ab initio, and consequently it should be deemed to have been never in existence. In "A Treatise on the Constitutional Limitations" by Thomas M. Cooley (1972 edition) under the head 'consequences if a statute is void' at page 188 it is observed

> "When a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made. And what is true of an act void *in toto* is true also as to any part of an act which is found to be unconstitutional, and which, consequently, is to be regarded as having never, at any time, been possessed of any legal force."

In **DEEPCHAND v. STATE OF U.P.**[7] and **JAGANNATH**

v. AUTHORISED OFFICER[8] the apex Court held that enactments which are struck down as unconstitutional are still born laws, and should be deemed to have never existed. When once the Act was struck down, all the actions taken in pursuance of the Rules and G.Os. issued thereunder are void ab initio. Therefore, second respondent, who admitted students belonging to Scheduled Caste community subject to the result of the appeal, cannot be heard to say that the admissions of such students cannot be reviewed in spite of the apex Court striking down the Act. So, respondents are bound to review the allotment made to the Scheduled Caste students and re-adjust the seats on the basis of their respective rank and marks.

7. If respondents wanted to save the admissions already made by them, they ought to have made a request to the Supreme Court, at the time of delivering of judgment, that admissions already made may be saved, because it is only the Supreme Court that has the power to prospectively overrule an enactment, and no other Court in the country has such power. See **GOLAK NATH**

v. STATE OF PUNJAB[9] where it is observed -

> "As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (*1*) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (*2*) it can be applied only by the highest Court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (*3*) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

8. The various decisions relied on by the learned counsel for the respondent have no application to the facts of this case because none of those cases relate to reviewing of admission as a consequence of striking down an enactment, basing on which admissions were made earlier. It is rather strange that an authority who ought to have taken up the exercise suo motu, is pleading inability to implement the order of the apex Court on some unsustainable grounds.

9. It is no doubt true that if re-adjustment is made the students have to complete the full term of the course into which they are admitted and cannot seek any exemption. Had the respondents not followed the rule of reservation among the Scheduled Caste students, petitioners might have got a seat in the subject of their choice. Now, by virtue of the review, if they get a seat in the subject of their choice they will have to study for the full term but cannot say that they may be exempted for studying the full term.

10. The contention of the respondents that the petition is bad for non-joinder of all the Scheduled Caste community students and the Medical Council of India, is to say the least, a desperate attempt to avoid the exercise of review. As stated earlier, in view of the interim order of the apex Court passed on 25/01/2001, it is the duty of the respondent to take up the review immediately after the apex Court struck down the Act. Since all the Scheduled Caste community people, while being admitted, were made aware that their admission is subject to the result of the appeal before the Supreme Court, they cannot be said to be prejudiced, even if they have to go to other course of study, because they got admission due to a reservation which is held to be impermissible and was struck down by the apex Court.

11. In the result, the petition is allowed and the Rule Nisi is made absolute. Respondents are directed to review the admissions of the petitioners as per their merit, subject to the condition that they should complete the term of study from the date of admission into the new course into which they are admitted. Petitioners are entitled to costs. Advocate fee is fixed at Rs.1,500/- (Rupees one thousand five hundred only).

(C.Y.Somayajulu, J.)

Date: 14-03-2005.

NOTE:

L.R.Copy tobe marked.

B/O

Cvrk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this the fourteenth day of March, Two Thousand and five.

ASSISTANT REGISTRAR

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MEMORANDUM OF COSTS

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Writ Petition No.23166 of 2004

Petitioners' costs Rs. Ps.

Stamp used for the writ petition 300-00

Stamp of vakalatnama 5-00

Stamp on enclosures

Advocate's fee (as fixed by Court) 1,500-00

Batta and postage

_____

To be paid by the respondents to the petitioners: 1,805-00

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ASSISTANT REGISTRAR

1) One fair copy to the Hon'ble Sri Justice C.Y.Somayajulu (For his Lordship's kind perusal)

To

2.The Principal Secretary, Health, Medical and Family Welfare

Department, Government of Andhra Pradesh, Secretariat,

Hyderabad.

3.The Registrar, NTR University of Health Sciences, Vijayawada.

4.2 CCs to G.P. for Medical Health & Family Welfare, High Court

Buildings, Hyderabad.(O.U.T.)

5. 2 CD copies

6.1 CC to MR.NUTY RAM MOHAN RAO

7. 8 L.R.Copies.

8. The Under Secretary, Union of India, Ministry of Law, Justice

and Company Affairs, New Delhi.

9. The Secretary, A.P. Advocates' Association Library, High Court of

A.P., Hyderabad.